MT LEGISLATIVE HISTORY

Chapter 329 1979

Bill H _____ S 322 Original bill & hist. ✓C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) Mar 07	✓C	Hearing Date(s) Feb 07	✓C
Mar 08	✓C	_____	___C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out Mar 08	✓C	Feb 08	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

CHAPTER NO. 329

SENATE BILL NO. 322

INTRODUCED BY HEALY, MEHRENS, B. BROWN, McCALLUM, LOWE

IN THE SENATE

January 31, 1979	Introduced and referred to Committee on Judiciary.
February 8, 1979	Committee recommend bill do pass. Report adopted.
February 9, 1979	Printed and placed on members' desks.
February 10, 1979	Second reading, do pass.
February 12, 1979	Considered correctly engrossed.
February 13, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 14, 1979	Introduced and referred to Committee on Judiciary.
March 8, 1979	Committee recommend bill be concurred in. Report adopted.
March 12, 1979	Second reading, concurred in.
March 15, 1979	Third reading, concurred in.

IN THE SENATE

March 16, 1979	Returned from second house. Concurred in. Sent to enrolling.
	Reported correctly enrolled.

Senate BILL NO. 322

INTRODUCED BY Neal, Mahoney, Bob Brown, Mohl, Lowe

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROTECT EMPLOYERS FROM CLAIMS FOR CONTRIBUTION OR INDEMNITY ASSERTED BY A THIRD PERSON; AMENDING SECTION 39-71-411, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-411, MCA, is amended to read:

"39-71-411. Provisions of chapter exclusive remedy — nonliability of insured employer. For all employments covered under the Workers' Compensation Act or for which an election has been made for coverage under the chapter, the provisions of the chapter are exclusive. Except as provided in part 5 of this chapter for uninsured employers and except as otherwise provided in the Workers' Compensation Act, an employer is not subject to any liability whatever for the death or personal injury to any employees covered by the Workers' Compensation Act or for any claims for contribution or indemnity asserted by a third person from whom damages are sought on account of such injuries or death. The Workers' Compensation Act binds the employee himself, and in case of death binds his personal representative and all persons having any right or claim to compensation for his injury or death, as well as the employer and the servants and employees of such employer and those conducting his business during liquidation, bankruptcy, or insolvency."

-End-

LC 1713/01

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 7, 1979

The twenty-eighth meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink in Room 331 of the Capitol Building on the above date at 9:30 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 322:

This bill was sponsored by Senator Healy and is an act to protect employers from claims for contribution or indemnity asserted by a third person. Senator Healy offered a prepared statement. (See Exhibit A.)

Mr. William Kirkpatrick, representing the Champion International Corporation gave a statement in support of this bill. (See Exhibit B.) He said the purpose is not to change the Workmen's Compensation law, but to clarify it.

Norman Grosfield, representing the Division of Workers' Compensation gave a statement in support of the bill.

George Wood, Executive Secretary of the Montana Self-Insurance Association, requested a do pass on this bill.

There were no further proponents and no opponents.

There were no questions and the hearing on the bill was closed.

CONSIDERATION OF SENATE BILL 271:

Senator Hazelbaker gave an explanation of this bill, which is an act to regulate the collection, storage and dissemination of criminal justice information to provide for privacy of the information in certain circumstances etc. He stated that this bill was the result of a four-year study set up by the Board of Crime Control.

Sheri Sprigg, from the attorney general's office offered a number of amendments. (See Exhibit C.) She stated that there have been a number of problems that they have encountered in trying to fulfill the law presently on the books. She stated that Congress, in 1975, passed a law that required any states that receive federal money must come up with a plan for assuring the privacy and security of the system. She said that Montana's Constitution contains both the right-to-know and the right-to-privacy. She went through the major sections of the bill and discussed the amendments.

Larry Petersen, staff member from the Board of Crime Control gave a statement in support of this bill.

Senator Turnage moved that we reconsider our action in deleting the word "maintenance" and moved to reinsert "maintenance". The motion carried unanimously.

Senator Turnage moved that the bill do pass as amended. The motion carried with Senator Brown voting no.

DISPOSITION OF SENATE BILL 207:

Senator Turnage moved that this bill do not pass. The motion carried with Senator Towe voting no.

DISPOSITION OF SENATE BILL 296:

Senator Van Valkenburg moved that this bill do pass. The motion carried unanimously.

DISPOSITION OF SENATE BILL 260:

Senator Brown moved that the bill be amended on page 1, line 17 after the word "privacy" by inserting the word "clearly". The motion carried unanimously.

Senator Brown moved that the bill do pass as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 322:

Senator Healy moved that this bill do pass. The motion carried unanimously.

There being no further business, the meeting adjourned at 8:02 p.m.

Everett R. Lensink

SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

Date 2/16/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Carr, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

Exhibit A

M E M O R A N D U M

Statement of Senator John E. Healy in support of SENATE BILL 322

Since the enactment of the first Workmen's Compensation Act in Montana, the employer's or insurer's responsibility for the payment of benefits has been limited to those specified in the law as amended from time to time. Because the employee had been given the right to benefits irrespective of whether or not he was negligent when the accident occurred, the common law liability of the employer was removed by the Compensation Act and its remedies were made exclusive.

If the injury to the employee was caused by the negligence of a third party, the employee, in addition to his right of compensation from the employer, was permitted by the Act to sue the third party, and the employer was given the right to subrogation for the benefits he paid the employee.

With developments in the product liability law, a relatively new problem for employers has emerged. The injured employee collects compensation. He then sues the manufacturer or seller of the equipment which may have contributed to his injury. The manufacturer or seller of the equipment then sues the employer for the amount sought by the employee on the theory of implied or expressed indemnity. Thus, the employer is confronted with the possibility of not only paying workers' compensation benefits, but also the amount collected by the employee in his action against a third party.

Oregon was confronted with this same problem and to protect the employers in that state from the great potential liability, it enacted an amendment to its law to protect its employers and insurers from such claims by the manufacturers or sellers.

Senate Bill 322 is designed to accomplish the same result in Montana.

Favorable Consideration
Do Pass

STATEMENT OF CHAMPION INTERNATIONAL CORPORATION

IN SUPPORT OF

SENATE BILL 322

Introduced by Senators Healy, Mehrens,
McCallum, Bob Brown and Lowe.

Almost every employer in Montana believes his liability for Workers' Compensation is limited to the benefits described in the law and he is required to carry insurance to provide such benefits to employees who are injured while working for him.

Now, after almost 65 years of uniform interpretation of this limited liability, the employer is about to learn that he may be responsible for damages far greater than the benefits specified in the law.

Here is what is happening. With product liability becoming much more prominent in our jurisprudence, the employee, in addition to his Workers' Compensation benefits, is permitted to sue the third party manufacturer of the equipment involved in his accident for damages because of some defect in the equipment. We have no objection to this. But then what happens? The insurance company who has insured the manufacturer, as a matter of course, sues the employer for the same amount on the theory that the employer did not take all of the precautions he should have, and seeks damages from the employer by way of contribution or indemnity. Of course, the employer has no insurance covering him for this liability which could be very substantial.

To illustrate what could happen, let's take an actual case: One of our employees was badly injured while operating a saw. He immediately qualified for Workers Compensation. He then sued the manufacturer of the saw for $11 million. Immediately the manufacturer's insurance company, Safeco, sues us for the $11 million. Shortly the case will be before the Montana Supreme Court on the question of whether we could be liable.

This bill will not affect this case. However, its passage would prevent other employers as well as our company from being subjected to this substantial liability in the future. And it would not deprive any Montana employee from collecting full damages from the manufacturer of faulty equipment.

We urge this committee to approve SB 322 to restore employers in Montana to the limited liability in Workers' Compensation matters which they have known for the past 65 years.

# # #

STANDING COMMITTEE REPORT

February 8, 19 79

MR. President:

We, your committee on Judiciary

having had under consideration Senate Bill No. 322

Respectfully report as follows: That Senate Bill No. 322

DO PASS

Everett R. Denish Chairman.

STATE PUB. CO.
Helena, Mont.

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
March 7th, 1979

The regular meeting of the Judiciary Committee was called to order by Chairman John Scully in room 436 of the Capitol Building at 8:00 a.m. on Wednesday March 7th. All members were present with the exception of Representative Keedy, Holmes and Seifert, all coming in later. Bills scheduled for hearing were Senate Bills 288, 364, 250, 256, 322, 346, 355, 394, 454 and 432.

SENATE BILL NO. 322: Senator Healy. This bill is to protect employers from claims for contribution or indemnity asserted by a third person. He read through the bill, and commented on worthless compensation benefits.

BILL KIRKPATRICK: Champion International. He said that the bill was approved unanimously by the Judiciary Committee in the Senate and on both second and third reading. He submitted written testimony to the committee, copy attached.

TIM REARDON: Division of Workers Compensation. We support the program.

WES BENNETT: Self-Insurers. Mr. Bowles of the Montana Chamber says that small business supports the bill.

SEANTOR HEALY: Many small workers might be put out of business. They would be protected by a bill like this.

There was no discussion and the hearing closed on Senate Bill No. 322.

SENATE BILL NO. 346: Senator Towe. This bill would allow more equal access to the courts by allowing the court to award costs and attorneys fees to people who are successful in a law suit against a governmental entity if the claim is judged to be frivolous or pursued in bad faith. If the state agencies or the political subdivisions, that brought or defended the action, is found by the court to be frivolous or in bad faith then they would be entitled to the costs enumerated. It might be called the equal access to the courts act. He read through the bill, and suggested an amendment on page 4, line 13, following frivolous to insert "or pursued in bad faith". He commented that this would not apply to traffic situations or accidents. He mentioned the reason for the amendment which would be in keeping with the administrative code committee. Discussion about this.

BARRY STEVENSON: National Federation of Independent Business men. 79% of our members favor this bill. He presented a copy of written testimony, copy attached.

JUDICIARY COMMITTEE
EXECUTIVE SESSION
March 8, 1979

Following the regular meeting the committee went into executive session to take action on pending bills. The meeting was called to order by Chairman Scully at 9:00 a.m. in room 436 of the Capitol Building on Thursday. All members were present although some did have to leave for other meetings, leaving votes for pending action.

SENATE BILL NO. 322: Representative Keyser moved "be concurred in". The motion carried with the vote unanimous. Representative Daily will carry or else check to see who will.

SENATE BILL NO. 432: Representative Kemmis moved "be concurred in". The motion carried with the Representative Day voting "no". Representative Scully will carry on the floor.

SENATE BILL NO. 288: Representative Lory moved "be concurred in". The motion carried with the vote unanimous. Representative Scully will carry on the floor.

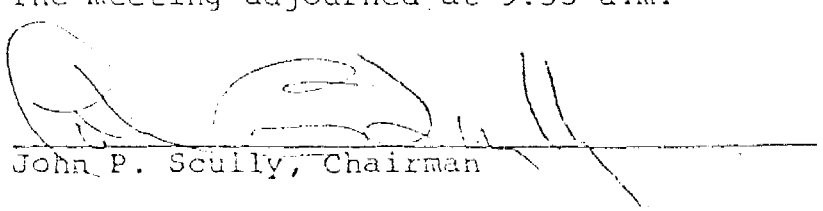
SENATE BILL NO. 367: Representative Lory moved "be concurred in". The motion carried with the vote unanimous. Representative Lory will carry on the floor.

SENATE BILL NO. 488: Representative Kemmis moved to amend on page 2, line 23 and strike subsection (1)(g) in its entirety. The motion carried with the vote unanimous. Representative Day moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Day will carry.

SENATE BILL NO. 88: Representative Scully appointed Representative Keedy to check with Senator Turnage and Mike Meloy about possible amendments. He will report back.

SENATE BILL NO. 217: Representative Lory moved "not concurred in". A straw vote showed that the motion would fail, consequently Representative Keedy presented his amendments to make it a workable bill. After some discussion about the amendments it was agreed to postpone until Representative Keedy could be there because he had to attend a Senate hearing. Before he left he did say that the main changes were on page 2, and new language on subsection 4. Representative Lory asked about where the action should occur. There was some discussion.

The meeting adjourned at 9:55 a.m.



John P. Scully, Chairman

SENATE BILL NO. 322

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-End-

REFERENCE BILL